Jurnal Daulat Hukum
Volume 8 No.4, December 2025
ISSN: 2614-560X
SINTA 3 Decree No.
0547/ES/DT.05.00/2024
Dated May 15, 2024

Land Ownership by Foreign Nationals Through Nominee Agreements: A Comparative Study of Thailand and the Philippines

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Abstract. *The development of the tourism sector in various tourist cities in Indonesia and the surge in investment in the property sector after the COVID-19 pandemic may trigger an increase in interest among foreign nationals to acquire land in Indonesia through nominee agreements. This practice can trigger land ownership disputes between nominees and beneficiary owners, as well as threaten the state's sovereignty over land. This study will examine the legal provisions of nominee agreements and formulate prevention strategies based on comparative studies with Thai and Philippine regulations. This study uses a normative juridical method with a comparative, legislative, and case analysis approach. Data was collected through literature study with qualitative descriptive analysis techniques, using deductive reasoning. This was followed by prescriptive analysis to produce recommendations or practical suggestions as preventive measures against nominee agreement practices in Indonesia. The results of the study show that nominee agreements contradict the objective requirements of agreements, the principle of good faith, and the provisions of the UUPA. This can cause such agreements to be null and void. However, the disharmony between the UUPA and SEMA No. 10 of 2020 causes uncertainty in law enforcement. The weaknesses of the national legal system demonstrate the urgency of imperative regulatory reform. Based on a comparative analysis with Thai and Philippine regulations, it can be seen that both regulations demonstrate the active role of the state in maintaining state sovereignty over land through different mechanisms. By integrating these two regulations into the Indonesian agrarian legal system, it is possible to close loopholes in the law and ensure that land ownership remains under state control.*

Keywords: *Foreign Nationals; Land Ownership; Nominee Agreement.*

1. Introduction

The development of the tourism sector has led many foreign nationals to want to own land and buildings in Indonesia. Foreign nationals in Indonesia have been given the opportunity to purchase property with land rights status as regulated in the Basic Agrarian Law (UUPA). Article 9 paragraph (1) of the UUPA explains that only Indonesian citizens can fully own land, water, and airspace, so there is a difference in the status of land and building ownership rights between Indonesian citizens and foreign nationals. (Hetharie, 2019: 28). Indonesian citizens have a great opportunity to obtain ownership of land and buildings with freehold status, while foreign nationals can only obtain land rights with certain status and for a limited period of time based on established regulations. (Rahmatika et al., 2024: 12623). Article 42 of the Basic Agrarian Law, as reinforced in Government Regulation No. 40 of 1996 concerning Land Use Rights, Building Use Rights, and Land Use Rights, explains that foreign nationals can only have rights to land and buildings in Indonesia with use rights status. (Silviana, 2019: 477).

Although applicable laws regulate restrictions on land and building ownership by foreign nationals, in reality, foreign nationals have ways to circumvent these restrictions, namely through legal engineering by means of nominee agreements. (Putri, 2024: 3). This practice involves using the name of an Indonesian citizen as the formal legal owner, while in reality, the foreign national is the owner of the land. Nominee agreements are often drafted in such a way as to conceal the ownership of land rights by foreigners, so that they do not appear to violate applicable legal provisions. (Sudhuri, 2024: 3). This practice is considered a form of legal smuggling. According to Kegel, legal smuggling involves attempts to circumvent legal provisions in unusual ways, which indicates deception or trickery. In German, this is called "Er wendet List an," which means to use tactics or cunning. (Gautama, 2019: 166)

The phenomenon of legal smuggling through nominee agreements is not limited to theory, but also occurs in concrete cases. One example is the case of David John Lock and Ann Lilian Lock (foreign nationals) as the Plaintiffs against Yuliartha (Indonesian citizen) as Defendant I in Decision Number 259/Pdt.G/2020/PN.Gin. In relation to the case in question, Yuliartha acted as the legal owner, while David and Ann Lilian were the beneficiary owners of the land and building based on the nominee agreement deed. The two foreign nationals claimed to have invested funds amounting to AUD 860,000 to purchase land and build a villa that is legally registered in the name of Defendant I (Indonesian citizen). The dispute arose when Defendant I refused to sell the asset and claimed full ownership of the villa, stating that the foreign nationals had reneged on the agreement to share the rental income from the villa, forcing him to bear the operational and maintenance costs and incur debts to other parties. Meanwhile, the plaintiffs wanted to sell the villa because their finances had deteriorated, but Defendant I refused their request. This case highlights the complexity and potential risks of nominee agreements, prompting numerous studies to examine this practice from various perspectives.

Several previous studies have highlighted that the practice of nominee agreements by foreign nationals is a form of legal smuggling that can threaten sovereignty over land in Indonesia. Mutiara Rizkia (2023) examined this practice from the perspective of International Civil Law (HPI) and concluded that nominee agreements often contain foreign elements because they involve parties of different nationalities, thus raising issues of jurisdiction and the enforcement of national law. (Rizkia, 2023: 3). Meanwhile, research by Merry and Listyowati (2024) highlights the inconsistency of judges in handing down Supreme Court Decision Number 1290K/Pdt/2022, related to nominee agreement cases in land sales. Supreme Court Circular Letter No. 10 of 2020 explains that in the practice of acquiring land rights through nominee agreements, the owner of a plot of land is the party whose name is listed on the certificate, while the Basic Agrarian Law explains that the transfer of land rights, whether directly or indirectly, to foreign nationals means that the land becomes the property of the state. (Christiangie, 2024: 1169). Meanwhile, research by Aslan Noor (2021) discusses the causes of the emergence of the nominee agreement phenomenon in Indonesia, which is due to the ambiguity of regulations prohibiting nominee agreements that are only limited to norms and have not yet taken the form of imperative legal rules. This is also due to the fact that the articles in the Basic Agrarian Law have not yet been implemented. (Noor, 2021: 177).

This phenomenon shows that Indonesia needs a more stringent and prevention oriented regulatory model, which requires a comparative analysis with other countries' regulations. Thailand and the Philippines were chosen as comparators because they have characteristics similar to Indonesia, namely as developing countries in Southeast Asia that rely on the tourism sector and foreign investment as drivers of economic growth. These three countries face similar challenges in maintaining sovereignty over land while attracting foreign investment, which has led to the emergence of land ownership smuggling practices by foreigners in famous tourist areas, such as Bali in Indonesia and Phuket in Thailand. In addition, these three countries also have similar legal systems, namely, they both adhere to the civil law system, but do not reject the common law system in the practice of law enforcement, making these three countries relevant for comparison of regulations governing land ownership by foreigners.

Previous studies have not examined efforts to prevent nominee agreements by foreigners and policy solutions in depth through comparative studies with other countries' regulations. This is what makes this study novel and distinguishes it from previous studies, given that nominee agreements by foreigners are still rampant, especially in various famous tourist cities in Indonesia, indicating critical legal loopholes that need to be addressed immediately. (Sudhuri, 2024: 8). This phenomenon is increasingly relevant with the increase in foreign property investment after the COVID-19 pandemic, which has the potential to expand the practice of nominee agreements by foreigners. Based on data from the Investment Coordinating Board (BKPM), throughout 2024, it was recorded that the amount of foreign investment in the housing, industrial estate and office areas was 46.4 trillion rupiah. (Laksono, 2025) This increase in investment could indirectly trigger more foreigners to look for legal loopholes, namely through nominee agreement practices.

This study aims to critically analyze the weaknesses of the national legal system that allow nominee agreements to continue, as well as to formulate a more comprehensive conceptual basis and normative framework in response to national regulatory weaknesses that open up opportunities for foreign nationals to engage in nominee agreements. The absence of effective legal instruments to combat the rampant practice of legal smuggling in the agrarian sector has created loopholes that threaten the state's sovereignty over land. Therefore, this study aims to make a real contribution to strengthening the national agrarian legal system by formulating preventive policy recommendations relevant to Indonesia's current legal needs.

2. Research Methods

This research is normative legal research, which involves identifying the legal sources being studied, followed by interpretation and analysis of those legal sources. (Bhat, P. I., 2019: 28). In the process, this study uses three types of legal research approaches, namely the comparative approach, the case approach, and the legislation approach. The legislation approach is carried out by examining the Civil Code, Law Number 5 of 1960, and Government Regulation Number 40 of 1996. Meanwhile, the case approach was conducted by analyzing Gianyar District Court Decision Number 259/Pdt.G/2020/PN.Gin. The comparative approach was conducted by comparing the regulations of Thailand and the Philippines. These two countries were chosen as comparative materials because they have explicit provisions regarding prohibitions and sanctions on land ownership by foreign nationals, as regulated in Thailand in the Land Code Promulgating Act, B.E. 2497 (1954) as amended until the Land Code Amendment Act (No.12), B.E. 2551 (2008), while in the Philippines it is regulated in Commonwealth Act No. 108 An Act To Punish Acts Of Evasion Of The Laws On The Nationalization Of Certain Rights, Franchises Or Privileges (Anti Dummy Law). The data collection technique was carried out through a literature study covering primary legal materials (laws and regulations and court decisions), secondary legal materials (books, journal articles, and expert opinions), and tertiary legal materials (in the form of Black's Law Dictionary). All data were analyzed descriptively and qualitatively using deductive reasoning, followed by prescriptive analysis to evaluate regulatory provisions relating to land ownership by foreign nationals, thereby producing recommendations or practical suggestions as a preventive measure against nominee agreements in Indonesia.

3. Results and Discussion

3.1. Legal Provisions of Nominee Agreements on the Practice of Legal Smuggling in Indonesia

According to Black's Law Dictionary, the term nominee is defined as "One designated to act for another as his representative in a rather limited sense. It is used sometimes to signify an agent or trustee. It has no connotation, however, other than that of acting for another, in representation of another, or as the grantee of another." (Garner, 1999: 1072). This definition describes a nominee as someone who is appointed to act on behalf of another party in a limited capacity, usually as an agent or trustee. When related to a nominee agreement, this term reflects a form of agreement in which a nominee acts as an intermediary to represent the interests of another party who is legally unable to own land in Indonesia.

Indonesian positive law does not explicitly regulate and recognize the existence of nominee agreements, so these agreements are classified as innominate agreements, which are agreements that have developed from social practices in society, without any specific provisions regulating them. (Salim, 2005: 3). In making an innominate agreement, the four requirements for a valid agreement as stipulated in Article 1320 of the Civil Code must still be met, namely the agreement of the parties, the capacity to enter into a contract, a specific subject matter, and a lawful cause. Based on these validity requirements, nominee agreements do not fulfill the requirement of a lawful cause because they aim to circumvent the legal provisions on land ownership, which can only be controlled by Indonesian citizens in accordance with the provisions of Article 9 in conjunction with Article 21 paragraph (1) of the Basic Agrarian Law.

Furthermore, when viewed from the object of the agreement, the nominee agreement also does not meet the third requirement for a valid agreement, namely a specific matter. The land that is the object of the agreement will become a prohibited object if its ownership is transferred from an Indonesian citizen to a foreign national through a nominee agreement. (Turman, et al., 2025: 3724). In addition, nominee agreements also contradict the principle of good faith, which is one of the important principles that must be fulfilled in the implementation of all forms of agreements. (Sentosa, et al., 2023: 32). Since the nominee agreement between Indonesian citizens and foreign nationals was initially agreed upon, there has been bad faith, particularly on the part of foreign nationals, who have consciously attempted to circumvent the provisions of the UUPA with the intention of controlling and owning land in Indonesia that is subject to freehold rights. (Hetharie, 2019: 32). Thus, nominee agreements also contradict Article 1338 of the Civil Code, which stipulates that agreements must be carried out in good faith.

The principle of good faith that is not applied in an agreement and the failure to fulfill the objective requirements of the agreement, namely a specific matter and a lawful cause, can cause the agreement to be null and void. (Khairandy, 2017: 191). This provision is in line with Article 1335 of the Civil Code, which states that an agreement made for a false or prohibited cause will result in the agreement having no legal force. Furthermore, Article 1337 of the Civil Code explains what is meant by a prohibited cause, namely if it is prohibited by law, or contrary to morality or public order. Based on these provisions, it is clear that nominee agreements have a prohibited cause because their purpose is to avoid restrictions on foreign ownership of land as regulated in the Basic Agrarian Law. (Putri, 2024: 6). This provision is in line with Subekti's opinion, which states that agreements made between Indonesian citizens and foreign nationals with the intention of concealing the actual cause (causa) are not permitted and are referred to as agreements with false causa. (Subekti, 1992: 137)

The existence of a false causa (prohibited cause) in the practice of nominee agreements by foreign nationals can be seen not only from the provisions of the Civil Code, but also from the Basic Agrarian Law as lex specialis in the field of national land law. Article 26 paragraph (1) The UUPA explicitly prohibits the transfer of land ownership to foreign nationals, either directly or indirectly, causing the land to become state property, without any refund of the money that has been paid. (Kurniawan, 2025: 401). This provision is reinforced in Article 27 of the UUPA, which states that ownership rights can be revoked if the land returned to the state or is no longer maintained. (Ansa, et al., 2024: 11024-11033). Article 43 of the UUPA also stipulates that any form of agreement that intends to transfer land ownership to another party without going through the established legal procedures is automatically considered invalid or null and void. Thus, the practice of nominee agreements by foreign nationals can undermine the national agrarian legal system, which adheres to the principles of nationality and restrictions on land ownership by foreign nationals. (Rubiati, 2021: 76). Therefore, the use of nominee agreements by foreign nationals can be categorized as legal smuggling because civil law instruments are used to circumvent the application of legal regulations.

Based on the theory of legal evasion (Kegel's doctrine) quoted from Sudargo Gautama's book (2019), it is stated that an act can be considered legal evasion if there is an attempt to avoid the application of a legal rule in an unusual way, which indicates deception or trickery. (Gautama, 2019: 166). The practice of nominee agreements fulfills this element because it is deliberately used to achieve something that is prohibited by national law. The purpose of legal evasion is to achieve something that is desired, even though it is actually prohibited by the national law of a country. (Yulia, 2016: 112). In the context of legal evasion, there is the principle of fraus omnia corrumpit, which asserts that fraud or legal evasion can corrupt everything. (Gautama, 1986: 167). In certain cases, acts of legal smuggling can be classified as unlawful acts as stipulated in Article 1365 of the Civil Code, resulting in consequences for the parties who commit the violation to pay compensation for the losses incurred as a result of the unlawful acts. (Azhari, et al., 2018: 43-50).

The phenomenon of legal smuggling through nominee agreements is clearly evident in Gianyar District Court Decision Number 259/Pdt.G/2020/PN.Gin. In this case, the panel of judges found that there was a legal relationship between Indonesian citizens and foreign nationals through a nominee agreement, whereby the land and buildings that were the subject of the dispute were legally registered in the name of Indonesian citizens (the defendants), but materially owned and controlled by the foreign nationals (the Plaintiffs) based on a notarial deed confirming that the Indonesian citizen's name was only borrowed. This fact indicates an indirect transfer of land ownership rights from the Indonesian citizen to the foreign nationals, meaning that the land that is the subject of the case should become state property and the deed (agreement) should be null and void in accordance with the provisions of Article 26 paragraph (2) of the Basic Agrarian Law (UUPA). However, in the operative part of the decision, the panel of judges did not declare the land to be the property of the state in accordance with the mandate of the UUPA, but instead declared that the Indonesian citizen (the defendant) was the legal owner of the land, on the grounds that the party whose name was listed on the land certificate was the legal owner.

The panel of judges' decision in the case a quo shows that the panel of judges refers more to the provisions of the Supreme Court Circular Letter (SEMA) Number 10 of 2020 concerning the Application of the Results of the 2020 Supreme Court Plenary Meeting as Guidelines for the Implementation of Tasks for the Court, particularly Section 2 Letter B of the General Civil Division, which emphasizes that in the practice of acquiring land rights through a nominee agreement, the owner of a plot of land is the party whose name is listed on the certificate, even if the land was purchased using funds from another party. (Chriatiangie, et al., 2024: 1169). However, the applicability of SEMA should not override the provisions of the UUPA because it is not a source of substantive law, but rather a technical clarification or internal guideline for judges. (Ulandari, et al., 2025: 2). The Supreme Court has the function of rule making power to establish rules or guidelines for the judicial bodies under it in order to maintain consistency in the application of the law, especially in cases that do not yet have a clear basis in the law. (Panggabean, 2005: 1-3). Thus, based on the rule-making power function, SEMA acts as a supplementary regulation to fill legal gaps and voids. (Cahyadi, 2014: 47). However, this does not mean that SEMA is an instrument that can change or invalidate higher provisions.

In the context of land ownership, the application of SEMA as the main basis for the decision has the potential to cause normative conflicts when viewed from Article 26 paragraph (2) of the UUPA. Based on the provisions of the UUPA, the transfer of land ownership from Indonesian citizens to foreign nationals should result in the revocation of land rights, not the formal recognition of ownership for the party whose name is listed on the certificate, as stipulated in SEMA Number 10 of 2020. However, based on the principle of lex specialis derogat legi generalis, it is stated that more specific rules override more general rules. (Manan, 2004: 56). In the hierarchy of legislation, SEMA is below the Law and is not equal to or higher than the UUPA. Basically, SEMA only functions as a policy (beleid) and has binding force only within the internal judicial environment. (Al Fasil, et al., 2023: 230).

The Gianyar District Court Decision Number 259/Pdt.G/2020/PN.Gin. reflects a difference in the application of the UUPA provisions, which require the removal of land ownership rights due to the transfer of land ownership to foreign nationals, whereas the judge's decision ruled that the land belonged to Indonesian citizens as nominees. In terms of the hierarchy of laws and regulations, the implementation of the UUPA should be the main reference, while the SEMA only serves as a technical guideline. Thus, the Gianyar District Court's decision reflects a disharmony between the UUPA and SEMA No. 10 of 2020, which has implications for the uncertainty of norms regarding how the state enforces restrictions on land ownership by foreign nationals. As a result, the principle of state sovereignty over land becomes blurred because the panel of judges' decision does not uphold the legal provisions as stipulated in the UUPA. Although SEMA No. 10 of 2020 aims to fill a legal vacuum, if it is applied beyond the provisions of the UUPA, it will actually weaken the state's sovereignty over land.

The inconsistency between the UUPA and SEMA Number 10 of 2020 shows that the practice of nominee agreements by foreign nationals has developed faster than the dynamics of national law. According to the author, the absence of explicit implementing regulations makes judges rely on the interpretation of SEMA in deciding cases, which ultimately weakens the principle of state sovereignty over land. The weaker the principle of state sovereignty over land becomes, the greater the opportunity for foreign nationals to indirectly control land in Indonesia. (Al Mahfi, et al., 2025: 384). Foreign nationals who use nominee agreements to control land in

Jurnal Daulat Hukum
Volume 8 No.4, December 2025
ISSN: 2614-560X
SINTA 3 Decree No.
0547/ES/DT.05.00/2024
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Indonesia are not subject to legal consequences that could deter them. Therefore, this condition shows that Indonesia needs more explicit and imperative regulatory reforms so that the practice of legal smuggling through nominee agreements can be effectively prevented.

3.2. Preventive Legal Measures Against Nominee Agreement Practices in Land Ownership in Indonesia Based on a Comparative Study of Thailand and the Philippines

The phenomenon of widespread land ownership by foreign nationals through nominee agreements, and the weak legal provisions in the Basic Agrarian Law, indicate that Indonesia still lacks a strong legal prevention system against legal smuggling practices in the agrarian sector. The phenomenon of land ownership by foreign nationals through nominee agreements is one of the most complex forms of legal smuggling in Indonesia's agrarian legal system. (Kurniawan, 2025: 397). Normatively, restrictions on land ownership for foreigners are actually regulated in Article 9 paragraph (1) in conjunction with Article 21 paragraph (1) of the UUPA, which clearly states that only Indonesian citizens have the right to own land. (Sumardjono, 2001). However, these provisions have not been accompanied by the enforcement of strict sanctions in the event of violations. As a result, the regulation does not have sufficient coercive power to prevent legal smuggling by foreign nationals. The weakness of these regulations is reflected in the actual conditions in society. In reality, there are still many cases of covert legal maneuvers used by foreigners to gain control of land in Indonesia. (Sudhuri, 2024: 6). This situation is evidence that the absence of imperative norms in the UUPA has opened the door to such practices.

Legal smuggling through nominee agreements. Research by the Indonesian Nominee Crisis Working Group (K3NI) found that an estimated 50,000 foreigners own land and property in Bali, including approximately 7,500 villas controlled by foreigners through nominee agreements. These findings were obtained by K3NI's public relations team after going through a litigation process in court. In addition, it is known that there are around 3,000 illegal investments made by foreigners in the Bali area. It is estimated that the total land cultivated through nominee agreements reaches 10,500 plots ranging from small to thousands of hectares, with an average value estimated at USD 10.4 billion or around IDR 109.2 trillion related to this practice. (Sumerta, 2019).

The phenomenon of widespread land ownership by foreign nationals, as revealed by K3NI, demonstrates the weak effectiveness of the UUPA and its derivative regulations, such as Government Regulation No. 40 of 1996 concerning Land Use Rights, Building Use Rights, and Land Use Rights. This condition shows that legal provisions that are not accompanied by strict monitoring and sanction mechanisms have not been able to prevent the practice of nominee agreements by foreigners. The phenomenon of widespread land ownership by foreigners also raises concerns about the state's sovereignty over land, especially given the high exchange rate difference between foreign currencies and the rupiah. (IndoPremier, 2025). The high exchange rate difference between foreign currencies and the rupiah can indirectly trigger more foreigners from developed countries to buy property in Indonesia and ultimately seek legal loopholes, namely through nominee agreements. Thus, without strict and prevention-oriented legal regulations, nominee agreements by foreigners have the potential to continue to grow. Therefore, regulatory updates accompanied by legally enforceable sanctions are urgently needed. In the process of developing such a legal model, Indonesia can follow the example of countries such as Thailand and the Philippines, which have implemented strict prohibitions and oversight of legal loopholes in land ownership.

Philippine regulations as stipulated in Commonwealth Act No. 108, also known as the anti-dummy law, can be used as a concrete example of legal mechanisms designed to prevent and repress the practice of land ownership smuggling by foreign nationals. Article 1 on penalties (section 1. penalty) expressly prohibits any Filipino citizen from acting as an intermediary for ownership or rights that are prohibited by law. so that if a foreign national takes advantage of such prohibited rights or ownership, both parties can be subject to criminal penalties of imprisonment for no less than five and no more than fifteen years, as well as a fine of at least the value of the concealed rights, but not less than 5,000 pesos. This provision clearly places nominee agreements (dummy laws) not only as a civil offense, but also as a serious criminal offense that threatens the state's sovereignty over land.

Furthermore, the provisions in Article 2 (section 2) emphasize the prohibition of practices that simulate minimum local ownership of shares in companies (simulation of capital stock), while Article 2 letter A (section 2-A. unlawful use, exploitation or enjoyment) prohibits all forms of granting rights, transfer, leasing, or control of rights by foreign nationals over rights that should be exclusive to Filipino citizens. If a violation is proven, the rights to the land are automatically revoked and transferred to the state, and the company involved may be dissolved under Article 3. This regulation shows that the Philippine legal system not only prohibits nominee agreements (dummy law), but also creates a legal structure that is capable of closing all possibilities of disguised ownership, by combining civil, criminal, and administrative sanctions.

Article 2 letter C (section 2-C) applies the provision of prima facie evidence, which is to show that there is sufficient or adequate evidence to support a lawsuit. (Wex Definitions Teams, 2025). This provision can be applied if a common law relationship (cohabitation without legal marriage) is found between a Filipino citizen and a foreign national, where there is suspected imbalance or financial capability that is not commensurate with the value of the land owned by the formal owner, then this becomes preliminary evidence of a suspected violation of the law. Based on this article, the contrary must be proven by the parties concerned. The mechanism of prima facie evidence is not yet recognized in the Indonesian agrarian legal system, so law enforcement officials often find it difficult to prove the existence of a covert relationship between Indonesian citizens and foreign nationals in the practice of nominee agreements.

The provisions in Article 3 letter A (section 3-A. reward to informer) also introduce a reward system for informants, namely the provision of a reward amounting to 25% of the total fine, to

Jurnal Daulat Hukum
Volume 8 No.4, December 2025
ISSN: 2614-560X
SINTA 3 Decree No.
0547/ES/DT.05.00/2024
Dated May 15, 2024

informants who voluntarily assist the government in uncovering violations of the provisions of the law, as well as providing protection for the identity and safety of informants so that they do not receive threats or retaliation from the reported party who committed the dummy law scheme. The reward is given if the informant's information helps the government find and prosecute the main perpetrators. Thus, Article 3 letter A (section 3-A) shows that Philippine law does not only focus on repressive aspects through the threat of strict sanctions, but also builds a participatory monitoring system that encourages community involvement in uncovering the practice of land ownership fraud by foreigners.

The land ownership system in the Philippines strictly stipulates that only Filipino citizens have the right to full ownership of land, while foreigners are limited to controlling land through leasehold rights. This restriction reflects the principle of nationality, which aims to maintain economic sovereignty and prevent foreign control of land (Jumamil, 2018: 686-688). The Philippines adheres to the principle of ius sanguinis, which affirms nationality as the primary basis for land ownership rights. (De Padua, 1985: 248-249). This principle is in line with the provisions of Commonwealth Act No. 108 (Anti Dummy Law), which restricts foreign nationals' control over rights that should be exclusive to Filipino citizens. However, in practice, there are still forms of indirect control by foreigners through long-term lease agreements or the establishment of companies with a majority of shares owned by Filipino citizens. Weak supervision of the implementation of agrarian policies often opens opportunities for dummy arrangements, which are essentially contrary to the spirit of nationalization. (Jumamil, 2018: 693). Compared to Indonesia, regulations in the Philippines can be said to be more effective in preventing indirect land ownership by foreigners. This is because the Philippine legal system explicitly restricts land ownership by foreigners, while in Indonesia there are still legal loopholes through nominee agreements that allow foreigners to covertly control land ownership rights. The strict restrictions in the Philippines are supported by the existence of Commonwealth Act No. 108 (Anti Dummy Law), which regulates criminal sanctions against the practice of smuggling rights that are restricted to foreigners. Thus, the mechanism for protecting land ownership in the Philippines shows greater effectiveness in maintaining the principle of nationality of land rights compared to regulations in Indonesia.

Meanwhile, Thai regulations can also be used as a concrete example of preventive and repressive legal mechanisms designed to prevent the illegal transfer of land ownership to foreign nationals. Land ownership regulations in Thailand are governed by B.E. 2497 of 1954 concerning Restrictions on Foreigners' Rights, as amended by B.E. 2551 of 2008, which contains restrictions and requirements to prevent foreigners from acquiring land that could affect the public interest. (Rayasawath, 2025: 8). Article 86 explicitly states that foreigners can only own land if specifically permitted by the Minister. This provision is clarified in Article 87, which regulates area restrictions and requires specific purposes of use, such as for residential, commercial, industrial, or agricultural activities, as further regulated in ministerial regulations. These regulations show that Thailand has put in place administrative licensing mechanisms and land area restrictions as a measure to prevent illegal ownership by foreigners.

As a preventive measure against illegal land ownership by foreigners, Thailand's regulations stipulate restrictions on land for foreigners and impose sanctions. Administrative measures include revocation of rights and obligations to relinquish land to the state in the event of a violation. Specifically, this provision is regulated in Articles 89 to 96, which stipulate the obligation to use land in accordance with the permit granted, and grant the Director General the authority to order the relinquishment or sale of land if the land is not used in accordance with the permit or exceeds the permitted limits. In addition, Article 96 bis provides limited exceptions for foreign investors who invest a minimum of 40 million Baht, with the obligation to maintain their investment and use the land in accordance with the permit that has been granted. Furthermore, Article 96 ter regulates sanctions and stipulates that if a foreign national violates the permit provisions or fails to meet the investment requirements, the land must be released within 180 days to one year. If this is not done, the state has the right to confiscate and sell the land by force. Article 96 serves as the basis for the Director General's authority to order the release or sale of land if the land is not used in accordance with the permit or exceeds the permitted limits. (Rayasawath, 2025: 9).

Although Thailand already has fairly comprehensive regulations governing land ownership restrictions for foreign nationals, research by Chacattrai Rayasawath (2025) shows that the implementation of these regulations in the era of globalization faces several challenges, namely the gap between legal principles and the reality in society, the ambiguity of the informal customary land ownership system, and the difficulty foreign investors have in fully understanding land rights. (Rayasawath, 2025: 5-6) This situation shows that strict regulations alone are not enough. They need to be accompanied by effective supervision, harmonization between positive law and customary practices, and increased legal understanding among foreigners in order to prevent foreigners from circumventing the law on land ownership.

Furthermore, a study conducted by Voradej Sukcharoen et al. (2010) explains that foreign ownership of land in Thailand does not only occur through legal ownership based on the Land Code B.E. 2497 of 1954, as amended in B.E. 2551 of 2008, but also through indirect land ownership practices using the names of local residents as intermediaries (nominees). The study reveals that in three famous tourist areas in Thailand, namely Rayong, Chiang Mai, and Phuket, there are nominee agreements by foreigners, where land assets are registered under the names of Thai citizens who act as spouses, company employees, or parties from law firms that assist in establishing local businesses. (Suckharoen, et al., 2010: 55-56). However, the Thai government continues to allow foreign nationals to own land through legal and limited mechanisms in order to maintain national economic stability. (Suckharoen, et al., 2010: 59). Thus, the case in Thailand shows that regulations without effective monitoring mechanisms are still insufficient to prevent legal loopholes through nominee agreements, which are prohibited by law. This phenomenon can serve as a lesson for Indonesia on the importance of developing a stricter land ownership verification and data transparency system as part of preventive efforts against covert ownership practices by foreign nationals.

Based on a comparative analysis with Thai and Philippine regulations, it can be seen that both regulations demonstrate the active role of the state in maintaining state sovereignty over land through different mechanisms. Thai regulations restrict land ownership by foreign nationals and impose administrative sanctions in the form of revocation of rights and the obligation to relinquish land to the state in the event of a violation. Meanwhile, Philippine regulations not only stipulate administrative sanctions for the prohibition of land ownership by foreigners, but also impose criminal sanctions on any local citizen who acts as an intermediary (nominee). These two regulations can serve as important references for Indonesia in strengthening its national agrarian legal system. As a preventive measure against the practice of legal smuggling through nominee agreements, Indonesia needs to establish a regulatory framework by integrating these two regulations. Thus, regulatory reforms will not only strengthen the principle of nationality as mandated in the Basic Agrarian Law, but also close legal loopholes regarding land ownership by foreigners through nominee agreements.

4. Conclusion

The practice of nominee agreements in land ownership by foreign nationals is a form of legal smuggling that contradicts the principle of state sovereignty over land, because such agreements do not meet the objective requirements of an agreement as stipulated in Article 1320 of the Civil Code, contradict the principle of good faith, and violate the provisions of Article 26 paragraph (2) of the Basic Agrarian Law. The Gianyar District Court Decision Number 259/Pdt.G/2020/PN.Gin shows a disharmony in the application of the UUPA and SEMA Number 10 of 2020, because the judge's decision gave more consideration to formal ownership in the certificate, thereby ignoring the provisions on the return of land to the state. This situation indicates a legal loophole and weak law enforcement, which opens up opportunities for nominee agreements by foreign nationals to continue in Indonesia. Therefore, preventive and firm regulatory reforms are needed. In the process of developing this legal model, Indonesia can learn from Thailand, which imposes strict restrictions accompanied by administrative sanctions, and the Philippines, which combines administrative and criminal sanctions and implements an incentive system for whistleblowers. The integration of these elements into Indonesia's agrarian legal system is a novel contribution of this research, as it offers a regulatory model that can close loopholes in the law and ensure that land ownership remains under state control.

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